IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

No. 604.

DIVISION 1287 OF THE AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, et al.,
Appellants,

vs.

STATE OF MISSOURI,
Appellee.

On Appeal from the Supreme Court of Missouri.

BRIEF

Of Laclede Gas Company, Amicus Curiae.

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INTEREST OF LACLEDE GAS COMPANY AND PRELIMINARY STATEMENT.

This brief is filed by Laclede Gas Company of St. Louis, Missouri (hereinafter called "Laclede"), with the consent of the parties given pursuant to Rule 42 of this Court's Rules.

Laclede is a regulated public utility which distributes natural gas to residential, industrial and commercial consumers in the St. Louis area. Laclede is the only utility which distributes natural gas to the general public in this area which has a population in excess of one and one-half million. Laclede has approximately 383,000 residential customers, and 24,000 commercial and industrial users. Included in its consumers are all the hospitals in the St. Louis area and most of the doctors' offices and clinics. Many of these institutions are dependent upon a constant supply of natural gas to perform their services. Most of Laclede's users are dependent upon natural gas for space heating during the winter months, and the vast majority have no alternate source of heat.

In addition to the foregoing, natural gas is a volatile commodity, which can be dangerous when not properly attended. The record in **Local No. 8-6, Oil, Chemical & Atomic Workers v. Missouri**, 361 U. S. 363, amply demonstrates the dangerous possibilities which exist when Laclede's distribution system is not properly attended because of a strike or lock-out. For these reasons, Laclede is vitally interested in the validity of the seizure-no-strike provisions of a Missouri statute, commonly known as the King-Thompson Act, Chap. 295, R. S. Mo., 1959, which are before the Court in this case.

Since the other briefs amply state the facts, it is not necessary to burden this brief with an additional recitation. Amicus Curiae does, however, believe that it is appropriate briefly to delineate the issues and explain its position with respect to those issues. First, Laclede wants to make it plain that it is supporting the King-Thompson Act because of its interest in protecting the public from an emergency which might be caused by an interruption of gas service. Laclede does not view the King-Thompson Act as a weapon in its labor relations

with its employees nor is it so used. The Appellants' and the A. F. L. - C. I. O.'s briefs have tried to infer (App's. Br. 27-29, 72; A. F. L. - C. I. O. Br. 2-5), that the King-Thompson Act is a labor relations statute which deprives public utility employees of their only effective weapon —i.e., the right to strike. This argument is erroneous. The King-Thompson Act does not deprive utility employees of the right to strike, in all situations. They are only forbidden to strike after the Governor has seized the utility and found that a strike or threatened strike is an immediate threat to the "public interest, health and welfare." § 295.180, R. S. Mo. 1959. Even then the Governor's finding is subject to judicial review and must be supported by substantial facts, see the opinion below, 361 S. W. 2d 33, 49 (R. 184). Laclede has no control over the Governor or the courts, and when a strike begins Laclede does not know if the state will intervene. The Record amply demonstrates this, because it shows that there have been thirty utility strikes in Missouri since the King-Thompson Act went into effect, and that the Governor intervened in only nine of these strikes (361 S. W. 2d 33, 55-56, R. 194-197). Four of these strikes involved Laclede, and the Governor found that an emergency existed in only one instance (361 S. W. 2d 33, 55-56, R. 194-197). Thus, the King-Thompson Act does not, in theory or practice, relieve Laclede of the fear or threat of a strike when it negotiates with its employees.

Furthermore, a strike by Laclede's employees has relatively little effect on the Company aside from the possibilities of danger heretofore mentioned. Laclede does not lose customers because it is a regulated utility and its customers have nowhere else to turn. For these reasons, the Appellants' argument that the King-Thompson Act deprives labor of its most effective weapon—i. e., the right to strike—in dealing with utility employers is more fiction than fact and has no proper place in the consideration of

this case. Instead, Laclede believes that this Court should consider the legal issues involved herein quite apart from the Appellants' thinly veiled implication that the State of Missouri and its public utilities have conspired to prevent utility unions from effectively representing their members.

Laclede believes that two important legal issues are involved in this case. The first is whether the case is moot, and the second is whether the seizure-no-strike provisions of the King-Thompson Act; §§ 295.180, 295.200 (1) and (6), R. S. Mo. 1959, are pre-empted by the Labor Management Relations Act of 1947, as amended, 61 Stat. 136, ff., 29 U. S. C., § 141 et seq. Laclede believes that the case is moot and that it would be most inopportune for this Court to determine important issues affecting the health, safety and welfare of the people of an entire state in a case where no live issue exists between the parties. If this Court decides the case is not moot, and reaches the constitutional question, Laclede believes that it is clear that the seizure-no-strike provisions of the King-Thompson Act are not pre-empted by the Taft-Hartley Act because the state statute is narrowly drawn emergency legislation enacted under the state's inherent police power to protect the public from disaster.

ARGUMENT.

I. This Case Is Moot Because the Injunction Issued by the State Court Has Expired.

On December 28, 1962, the Governor of Missouri, acting pursuant to § 295.180, R. S. Mo. 1959, issued an Executive Order which vacated the state's seizure of the Kansas City transit company. This order, which is set out in the Appendix attached to the Appellee's brief, became effective on January 12, 1963, and was called to this Court's attention by the Appellee on January 8, 1963.[1] The Governor's order terminated the injunction issued against the Appellant because the Supreme Court of Missouri specifically held (361 S. W. 2d 33, 49, R. 183):

> "• • • We find nothing in the Act to prevent appellants from making application to the Governor at any time for the release of the property of the utility upon reasonable notice and terms and **any such release would relieve appellants from the particular judgment entered in this case.** Further, as hereinafter mentioned, in the event of the denial of such relief, appellants could apply to the trial court for a modification of the judgment theretofore entered" (Emphasis supplied).

The termination of the seizure and the lower court's injunction makes this appeal moot, and any judgment rendered at the present time "would be wholly ineffectual

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[1] Appellee's action in so doing was not only proper, but was in fulfillment of a duty imposed upon counsel practicing before this Court. As stated in Stern and Grossman, *Supreme Court Practice* (3d ed. 1962), p. 437, whenever any matter occurs which might render a pending case moot, "the Supreme Court regards it as the duty of counsel to call such facts to its attention, in order that it may not unknowingly exercise its authority in cases in which it no longer has jurisdiction."

for want of a subject matter on which it could operate." **Brownlow v. Schwartz**, 261 U. S. 216, 217. **Harris v. Battle**, 348 U. S. 803, and **Local No. 8-6, Oil, Chemical & Atomic Workers Union v. Missouri**, 361 U. S. 363, govern this case, and in unequivocal terms dispose of all of the arguments which are urged by Appellant in an attempt to persuade the Court that this appeal is viable (Br. 75-84). The relevant facts in this case are indistinguishable on any matter of substance from those in **Local No. 8-6**. Both involved utility strikes which had been enjoined under the King-Thompson Act and in both cases the state's seizure of the utility had been lifted before the case reached this Court. It is also clear that the injunctions issued in both cases expired before they reached this Court. In the instant case, the Missouri Supreme Court specifically held that the Governor's vacation of seizure terminated the injunction which had been issued against the Appellants under the King-Thompson Act, 361 S. W. 2d 33, 49 (R. 183). This constitutes a judicial construction of a state statute by the highest court of Missouri, and it is well settled that such a construction is binding on this Court. **West v. Louisiana**, 194 U. S. 258, 261; and **Missouri ex rel. Hurwitz v. North**, 271 U. S. 40, 41. Thus, there can be no dispute that the injunction enjoining the Appellants from striking has, like the injunction in **Local No. 8-6**, "long since expired by its own terms" (361 U. S. 363, 367).[2]

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[2] The Appellants apparently concede, as they must, that the particular injunction issued against them by the Missouri courts has expired because the argument in their brief is primarily addressed to the proposition that there is nothing to prevent the Governor from instituting a new seizure (Br. 75-84). Despite this, Appellants point out in footnote 13 (Br. 75) that the trial court refused to sign an order dissolving the injunction. As shown in Appellants' brief, the trial court refused to do this on the ground that it could not enter any order while the case was pending in this Court, and not on the ground that the injunction is still in effect. The State of Missouri undoubtedly asked the trial court to

In Amicus Curiae's judgment it is quite unnecessary to go beyond the holdings in **Local No. 8-6**, and **Harris v. Battle** to show beyond all doubt that this case is moot. Nevertheless, the Appellants have attempted to "distinguish" these cases (Br. 75-84). Amicus Curiae believes Appellants should have candidly admitted that they are asking this Court to overrule **Local No. 8-6** and **Harris v. Battle** rather than trying to distinguish them. Since Appellants chose the latter course, however, it is appropriate to demonstrate that the suggested distinctions cannot withstand analysis.

Appellants argue that **Local No. 8-6** and **Harris v. Battle** are distinguishable because in those cases the labor dispute was settled before the cases reached this Court, whereas in this case the labor dispute has not been settled (Br. 77). In so doing, Appellants ignore the terms of the very judgment from which they are appealing. The judgment below enjoined the Appellants from striking while the utility was under state seizure (R. 128). The existence of a labor dispute between a utility and its employees is quite immaterial when the employees have been completely released from the imposition of the injunction from which they are appealing. This was settled in **Amalgamated Ass'n. of S. E. R. M. C. E. A. v. Wisconsin Emp. Rel. Bd.**, 340 U. S. 416, where this Court made it clear that the existence of an enforceable judgment rather than a labor dispute is the important criterion in determining whether a case of this type is moot. The Appellee argued that that case was moot because the labor dispute

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enter the order of dissolution for the purpose of closing that court's file, and not because the State believed the trial judge's order was necessary (see letter from the Missouri Attorney General to Appellants' attorneys which was filed in this Court on January 8, 1963). Regardless of the State's motive in requesting a dissolution order from the trial court, however, it is clear that the injunction has expired because, as pointed out in the text, Missouri Supreme Court so held.

had been settled, but the Court said, "no question of mootness can be raised so long as enforcement of that judgment is sought." 340 U. S. 416, 417. From this decision it follows *a fortiori* that when enforcement of the injunction ceases to be sought, the case is moot regardless of the status of the labor dispute. Appellants are not appealing from a judgment resolving a labor dispute, but from an injunction issued against them which has expired.

Appellants argue that the case is not moot because the State of Missouri is free to use the seizure-no-strike provision in the King-Thompson Act again, either in this labor dispute or in the next public utility strike which arises (Br. 76-80). Appellants base this argument on **Southern Pac. Terminal Co. v. Interstate Com. Comm'n**, 219 U. S. 498, and similar decisions which involved "short term" administrative orders that had expired before their validity could be finally adjudicated in the Federal courts (Br. 76, footnote 19).[3] In those cases the Court held that an administrative agency which was the defendant in an action and which asserted continuing jurisdiction over the plaintiff, could not frustrate judicial review by issuing short term orders which expired before the appellate court could finally decide the case. It is not necessary to review the numerous distinctions between these cases and the instant case in detail, because in **Local No. 8-6** this Court held that the short term order cases did not apply

[3] All of the cases cited by Appellants in footnote 19 (Br. 76) except *Application of Colton*, 201 F. 2d 487 (2d Cir.), are based on *Southern Pac. Terminal Co. v. Interstate Com. Comm'n*, 219 U. S. 498, which, along with cases akin to it, was expressly rejected in *Harris v. Battle*, 348 U. S. 803, and *Local No. 8-6, Oil, Chemical & Atomic Workers Union v. Missouri*, 361 U. S. 363, 368-369. *Application of Colton*, supra, relies solely upon *Yarnell v. Hillsborough Packing Co.*, 70 F. 2d 435 (5th Cir.), which, like the other cases cited by Appellant, is based on *Southern Pac. Terminal Co. v. Interstate Com. Comm'n*, supra. In short, all of the cases cited by Appellants in footnote 19 are mere echoes of *Southern Pac. Terminal Co.*

to an injunction issued under the King-Thompson Act (364 U. S. 363, 368-369):

> "In this Court it was urged [in Harris v. Battle, 348 U. S. 803] that the controversy was not moot because of the continuing threat of state seizure in future labor disputes. It was argued that the State's abandonment of alleged unconstitutional activity after its objective had been accomplished should not be permitted to forestall decision as to the validity of the statute under which the State had purported to act. It was contended that the situation was akin to cases like Southern P. Terminal Co. v. Interstate Commerce Com., 219 US 498, 514-516, 55 L ed 310, 315, 316, 31 S Ct 279. In finding that the controversy was moot, the Court necessarily rejected all these contentions • • •. [T]he same contentions must be rejected in the present case."

Amicus Curiae has no quarrel with the holding in **Southern Pac. Terminal Co.**, and the other cases cited by Appellants in footnote 19 (Br. 76), but it is quite evident, as this Court held in **Local No. 8-6**, that they are not in point. Before an injunction can be obtained under the King-Thompson Act a full scale judicial proceeding must be instituted in a court of record where all parties have an opportunity to be heard. This is quite different from the type of quick, "ex parte" administrative order which the defendants were free to reinstate in cases like **Southern Pac. Terminal Co.**

There is another elementary reason why the cases cited by Appellants do not govern this case. Without exception the cases relied upon by Appellants involve a situation where a defendant by the cessation of allegedly illegal conduct, sought to prevent a plaintiff, the moving party, from obtaining relief by asserting that the cessation of such conduct rendered the matter moot. Thus, in **United**

States v. W. T. Grant Co., 345 U. S. 629, a defendant sought to prevent the government from questioning whether his position on the board of directors of several companies violated the anti-trust laws by resigning as a director of several of the companies and then asserting that the issue had become moot. Likewise, in **Southern Pac. Terminal Co.**, it was the defendant that urged the case was moot because it had abandoned the particular conduct which the plaintiff was trying to enjoin. This distinction was noted by this Court in **Mills v. Green**, 159 U. S. 651, and in **United States v. Hamburg-Amerikanische Packet-Fahrt-Actien Gesellschaft**, 239 U. S. 466. In the latter decision the Court said (239 U. S. 466, 477):

> "Leaving aside some immaterial differences, in terms the ruling in the Southern Pacific Case [219 U. S. 498], was based upon the decision in the Trans-Missouri Case [166 U. S. 290]. * * * The difference between this and the Trans-Missouri Case was clearly laid down in Mills v. Green, 159 U. S. 651, 40 L. Ed. 293, 16 Sup. Ct. Rep. 132, where, after announcing the general rule as to the absence of authority to consider a mere moot question, and referring to possible exceptions resulting from the fact that the want of actuality had arisen either from the consent of the parties or the action of a defendant, it was declared: **'But if the intervening event is owing to the plaintiff's own act * * * the court will stay its hand'** " (Emphasis supplied).

Amicus Curiae have been unable to find any case wherein this Court has held that a plaintiff who voluntarily abandons his cause does not thereby preclude a judicial determination of the case. It must be remembered that the Appellee in this case was the moving party who, in the first instance, sought to enforce an alleged right against the Appellants.

Appellants' final and most vigorous argument on the mootness issue is that **Harris v. Battle** and **Local No. 8-6** are distinguishable because the seizure was vacated in this case merely to defeat this Court's jurisdiction and prevent an adverse determination of the constitutional issues (Br. 81-83). Appellants suggest that the Governor of Missouri is "an offender" who is using his position "to decide for himself when, if ever, he chooses to be brought to judgment". (Br. 83). Although a diatribe of this caliber hardly deserves recognition, Amicus Curiae feels compelled to demonstrate that there is no legal foundation for the Appellants' assertion. As this Court said in **Brownlow v. Schwartz**, 261 U. S. 216, 218, "The motive of the officer, so far as this question is concerned, is quite immaterial. We are interested only in the indisputable fact that his action, however induced, has left nothing to litigate."

Commercial Cable Co. v. Burleson, 250 U. S. 360, in particular, shows that the Appellants attack on the Governor's motive has no legal merit. In that case the President seized the plaintiff's communication facility pursuant to emergency legislation enacted during the first world war. The plaintiff brought suit against the President's agent, the Postmaster General, to enjoin the seizure on the ground that the joint resolution under which the President acted was unconstitutional. After the case was taken under advisement by this Court the President lifted the seizure and returned the facility to the plaintiff. The plaintiff, like the Appellants herein, argued that the case was not moot because the President was free to institute the "illegal" seizure on another day. The Court held (l. c. 362):

> "By appeals, the cases were brought here and were argued and submitted in March last. While they were under advisement the United States directed attention to the fact that, by authority of the President, all the

cable lines with which the two corporations were concerned and to which the bills related, had been turned over to and had been accepted by the corporations, and the government hence had no longer any interest in the controversy. As the result of submitting an inquiry to counsel as to whether the cases had become moot, that result is admitted by the United States, but in a measure is disputed by the appellants for the following reasons: First, it is said that as the taking over of the lines by the President was wholly unwarranted and without any public necessity whatever, **there is ground to fear that they may again be wrongfully taken unless these cases now proceed to a decree condemning the original wrong;** * * *'''. (Emphasis supplied.)

* * * * * * *'*

"But we are of opinion that these anticipations of possible danger afford no basis for the suggestion that the cases now present any possible subject for judicial action, and hence it results that they are wholly moot and must be dismissed for that reason. * * *'''

In short, Appellants' appeals for sympathy cannot change the fact that this case is moot. No better proof of this fact can be found than the concluding quotation which was selected by this Court in the **Local No. 8-6** case (361 U. S. 363, 371):

"'* * * 'An affirmance would ostensibly require something to be done which had already taken place. A reversal would ostensibly avoid an event which had already passed beyond recall. One would be as vain as the other. To adjudicate a cause which no longer exists is a proceeding which this Court uniformly has declined to entertain;' * * *'''

II. The Seizure-No-Strike Provisions of the King-Thompson Act Are Not Pre-empted by the Taft-Hartley Act.

The primary constitutional issue on the merits of this case is the pre-emption question. If this Court abandons its prior decision in **Local No. 8-6, Oil, Chemical & Atomic Workers v. Missouri**, 361 U. S. 363, and reaches the constitutional issue, it should also carefully re-examine the pre-emption doctrine to be certain that it is not carried to unwarranted extremes. Amicus Curiae does not intend to explore the whole breadth of the pre-emption issue because it was covered with great care in the able opinion of the Court below (361 S. W. 2d 33, R. 158), and will be treated in detail in the Appellee's brief. Rather than inadequately rephrase the principal arguments, Amicus Curiae will present an analysis which may not be contained in the other briefs.

Before discussing the pre-emption issue, however, it is necessary to point out that the validity of the entire King-Thompson Act is not before this Court.[4] The court below held that the seizure-no-strike provisions of the King-Thompson Act, §§ 295.180, 295.200 (1) and 295.200 (6) (361 S. W. 2d 33, 36-37, R. 158, 161), are the only portions of the Act which are involved in this case. The lower court also re-affirmed its prior decisions which held that the

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[4] Appellants evidently believe the entire Act is before the Court because its brief has gone to great lengths to demonstrate conflicts between the Taft-Hartley Act and the provisions in the King-Thompson Act relating to the State Mediation Board's powers and duties (Br. 41-48). A number of minor variations in the State Board's procedure and the procedure established by the federal act are singled out and given great emphasis (Br. 41-48). Although Laclede does not believe the mediation provisions in the King-Thompson Act are in conflict with the Taft-Hartley Act, it doesn't make any difference in this particular case if they are since the seizure-no-strike provisions are the only portions of the Act before the Court.

seizure-no-strike provisions are severable from the remainder of the Act which deals with the powers and duties of the State Mediation Board, 361 S. W. 2d 33, 46 (R. 158, 178-179); **State ex rel. State Board of Mediation v. Pigg**, 362 Mo. 798, 244 S. W. 2d 75, 83 et seq.; and **State v. Local No. 8-6, Oil, Chemical & Atomic Workers International**, 317 S. W. 2d 309, 315, 323 (Mo. Sup.).

In **Local No. 8-6, Oil, Chemical & Atomic Workers v. Missouri**, 361 U. S. 363, this Court recognized that the Missouri Court could limit its decision to the seizure-no-strike provisions of the King-Thompson Act (l. c. 366, 367):

> "• • • The Court restricted its consideration, however, to those sections of the King-Thompson Act, 'directly involved'—'Section 295.180, relating to the power of seizure, and sub-paragraphs (1) and (6) of Section 295.200, RSMo, V. A. M. S., making unlawful a strike or concerted refusal to work after seizure and giving the state courts power to enforce the provisions of the Act by injunction or other means.' (Mo.) 317 SW 2d 309, at 316."

Thus, it is clear that this Court should only consider the seizure-no-strike provisions, and that the opinion should be careful to avoid any general reference which might include the portion of the King-Thompson Act dealing with the State Mediation Board's powers and duties.[5]

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[5] The A. F. L.-C. I. O.'s brief argues that the mediation provisions in the Act are before the Court because certain attempts at mediation were made by the State Board before the Governor seized the Kansas City transit company (A. F. L.-C. I. O. Br. 15-16). There might be some merit to this position if the Governor's seizure had been predicated or dependent upon the preliminary mediation efforts of the State Board. This, however, is not the case because the Governor's seizure was predicated solely upon the strike and the resulting threat to the "public interest, health and welfare" (R. 132-133, 134, 136-137). No attempt was made to justify the seizure on the Mediation Board's failure to obtain a settlement of the labor dispute.

The seizure-no-strike provisions of the King-Thompson Act have on two occasions been authoritatively interpreted by Missouri's highest Court, see opinion below, 361 S. W. 2d 33, R. 158; and **State v. Local No. 8-6, Oil, Chemical & Atomic Workers International,** 317 S. W. 2d 309 (Mo. Sup.). In those cases the court held that the seizure-no-strike provisions are "strictly emergency legislation" enacted under the state's police power, 361 S. W. 2d 33, 49, R. 158, 184; 317 S. W. 2d 309, 321, which cannot be invoked in a labor dispute until the "public safety, health, and welfare is sufficiently endangered to require the State to be concerned with the operation of the utility and . . . (to take) . . . possession of its physical property . . . to prevent public disaster," 361 S. W. 2d 33, 53, R. 158, 191. Even in these circumstances an injunction cannot be obtained unless the courts find that an emergency actually exists. 361 S. W. 2d 33, 49, R. 158, 184; 317 S. W. 2d 309, 322. Finally, the lower court held that the King-Thompson Act does not authorize a permanent injunction in a particular strike, because the seizure and the injunction can only remain in effect while the emergency lasts, 361 S. W. 2d 33, 49, R. 158, 184.

This construction of the King-Thompson Act by the state court is, under established precedent, binding on this Court. **West v. Louisiana,** 194 U. S. 258, 261, and **Missouri ex rel. Hurwitz v. North,** 271 U. S. 40, 41. This Court's duty is to determine whether the statute as interpreted by the state court is constitutional.

Amicus Curiae feels that little can be added to the voluminous discussions about the effect of **Amalgamated Assoc. of S. E. R. M. C. E. A. v. Wisconsin,** 340 U. S. 383, which are contained in the other briefs. It is clear to Amicus Curiae that the **Amalgamated** decision does not control this case because the Wisconsin Act, unlike the King-Thompson Act, was not a police measure designed

for the sole purpose of protecting the public from disaster in an emergency created by a utility strike. Mr. Chief Justice Vinson was careful to point this out in the majority opinion when he said: "the Wisconsin Act before us is not 'emergency' legislation • • • and application of the act does not require the existence of an 'emergency,'" 340 U. S. 383, 393, 394. He even documented the latter statement by observing in footnote 19 that (l. c. 394):

> "Far from being legislation aimed at 'emergencies' the Wisconsin Act has been invoked to avert a threatened strike of clerical workers of a utility • • •."

Thus, it is clear that the central question in this case differs radically from the question in the **Amalgamated** case. Regardless of the outcome of this case on the merits, Amicus Curiae believes that this Court should analyze the question presented by this Record and the lower court's construction of the King-Thompson Act, and refuse to dispose of the appeal by merely referring to the **Amalgamated** decision.

The other labor pre-emption cases like **Allen-Bradley Local v. Wisconsin Employment Relations Board**, 315 U. S. 740; **San Diego Bldg. Trades Council v. Garmon**, 359 U. S. 236; **Garner v. Teamsters C & H Local Union**, 346 U. S. 485; **Hill v. Florida**, 325 U. S. 538; **International Union of U. A. W. v. Wisconsin Emp. Rel. Bd.**, 336 U. S. 245; **Local 24, International Brotherhood of Teamsters v. Oliver**, 358 U. S. 283; **United Auto Workers v. Wisconsin Emp. Rel. Bd.**, 351 U. S. 266; **Weber v. Anheuser-Busch, Inc.**, 348 U. S. 468, and **Youngdahl v. Rainfair, Inc.**, 355 U. S. 131, have been discussed in the other briefs and there is little that Amicus Curiae can add. Generally speaking, these cases show that the Taft-Hartley Act does not pre-empt state police measures designed to protect public health, safety and welfare, although it does supersede general state

laws designed to regulate relations between management and labor. This generalization is illustrated by the violence cases where this Court has repeatedly held that the states' inherent power to protect the public and preserve order has not been impaired by the Taft-Hartley Act.

A great deal has been written in the other briefs concerning the intent of Congress with respect to utility strikes which create a local emergency. In documenting these arguments the briefs have set out a number of statements made by various Congressmen when the Taft-Hartley Act was passed. The various Holland amendments to the Taft-Hartley Act which have been introduced in Congress but never passed are also discussed in detail in the other briefs. The excellent discussions of this subject in the Amicus Curiae brief filed by the Kansas City Power and Light Company shows that there is nothing in the Congressional debates surrounding the Taft-Hartley Act or the defeat of the various Holland amendments which even remotely suggests that Congress intended to pre-empt the states' inherent police power to protect the public from disaster in a utility strike. In fact, as that briefs shows, the Congressmen who participated in the debates obviously thought that the states could and should protect the public in genuine emergencies.

Rather than review the Congressional debates Laclede believes it would be more beneficial to examine another source of Congressional intent which has not been discussed in the other briefs. One of the basic sources for determining legislative intent is the language chosen by Congress in the federal act. **United States v. American Trucking Ass'n,** 310 U. S. 534, 543. This language is often overlooked in extended analyses of the Congressional Record, but it is nevertheless persuasive in many situations. The language used in § 7 of the Taft-Hartley Act, 29 U. S. C., § 157, conclusively demonstrates that Congress did not

intend to pre-empt narrowly drawn state legislation like the King-Thompson Act, which is aimed exclusively at preserving the public health, safety and welfare in an emergency created by a utility strike.

Language used in a statute should be given its usual and accepted meaning unless a contrary intent is evidenced by the legislature. In § 7 of the Taft-Hartley Act, Congress provided that "Employees shall have the right to • • • engage in other concerted activities for the purpose of collective bargaining • • •", 29 U. S. C., § 157. In selecting the word "right" Congress chose a word with many connotations, but there is one universally understood limitation attached to the word, and this is that a "right" which involves conduct is never absolute but "remains subject to regulation for the protection of society". **Cantwell v. Connecticut**, 310 U. S. 296, 304.

Thus, even the most basic "rights", such as freedom of speech, are subject to some limitation by the police power of the state in the interest of public health, safety and welfare, **Gitlow v. New York**, 268 U. S. 652; **Whitney v. California**, 274 U. S. 357. As Mr. Justice Holmes put it with characteristic clarity, no one has the right to shout fire in a crowded theater. **Schenck v. United States**, 249 U. S. 47, 52.

In **Jacobson v. Massachusetts**, 197 U. S. 11, this Court, while sustaining compulsory vaccination in the interest of the public health, said (l. c. 26):

> "But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society

could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others."

The foregoing cases show that the most basic individual "rights" are subject to the states' essential power to protect the public. These cases have nothing to do with the pre-emption doctrine as such, but they do illustrate the commonly understood limitations of the word "right" which Congress chose in § 7 of the Taft-Hartley Act. Since Congress must have been aware of these limitations, it is rather difficult to see how it can be argued that Congress by merely protecting the "right" to strike intended to create an absolute "right" which can be exercised even when it poses an immediate threat to the public's health, safety and welfare.

This Court has on various occasions recognized this principle by holding that the "right" to strike which is now protected by § 7 is not absolute. Thus in **Southern S. S. Co. v. National Labor Rel. Bd.**, 316 U. S. 31, it was held that there was no right to strike in violation of the federal mutiny law. In **International Union v. Wisconsin Emp. Rel. Bd.**, 336 U. S. 245, this Court said (l. c. 259):

> "The right to strike, because of its more serious impact upon the public interest, is more vulnerable to regulation than the right to organize and select representatives for lawful purposes of collective bargaining which this Court has characterized as a 'fundamental right' and which, as the Court has pointed out, was recognized as such in its decisions

long before it was given protection by the Labor Relations Act."

Recognition by this Court that the Taft-Hartley Act does not bar the exercise of emergency state police powers to protect the public in a utility strike, though such exercise does in some instances restrict the right to strike, need not open the way to indiscriminate state encroachment upon the rights protected by the Taft-Hartley Act. Although it would not be proper in this brief to attempt a detailed exploration of the permissible limits on the states' exercise of their police power in areas protected by the Taft-Hartley Act, the cases dealing with basic individual "rights" show, by analogy, that there are very real limitations upon the exercise of the states' inherent police power to protect the public. Limitations applied in the same spirit in the labor pre-emption field would be an effective check on the states' ability through the use of their police power to interfere with the substantive "rights" protected by § 7. The most important limitation, of course, is whether the state law is a real police measure designed to protect health and safety, or whether it is a mere sham to hide a state regulatory measure, **The Hannibal & St. J. R. Co. v. Husen**, 95 U. S. 465. The sections of the King-Thompson Act here involved are clearly bona fide health and safety regulations because they are limited to public utilities which have monopolistic control over services essential to public health and safety and because the Governor must find that an emergency actually exists before the seizure-no-strike provisions can be invoked. Furthermore, the Governor's finding that an emergency exists is subject to judicial review.

Even if a state statute is a bona fide police regulation, however, it can not impose too broad or general a restraint on the exercise of basic individual "rights." By way of illustration, general licensing requirements which tend to

create a prior restraint on the exercise of a freedom protected by the Fourteenth and First Amendments are held to be invalid even though they are enacted under the states' police power, **Thomas v. Collins**, 323 U. S. 516 (free speech); **De Jonge v. Oregon**, 299 U. S. 353 (peaceful assembly); **Cantwell v. Connecticut**, 310 U. S. 296 (religion). The first of these cases used the following language to describe the only occasion upon which the police power would be justified in imposing a prior restraint on the exercise of these freedoms (323 U. S. 516, 530):

> "These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, **must have clear support in public danger, actual or impending.** Only the gravest abuses, endangering paramount interest give occasion for permissible limitation." (Emphasis supplied.)

And (l. c. 540):

> "• • • We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment."

These cases which illustrate the very limited occasion—immediate threat to the public health, safety or order—when the state is justified in imposing a prior restraint on the exercise of some of the basic individual freedoms are instructive of an important difference between the King-Thompson Act and the Wisconsin Act which this Court struck down in **Amalgamated Ass'n of S. E. R. M. C. E. v. Wisconsin Emp. Rel. Bd.**, 340 U. S. 383. The Wisconsin statute imposed a prior and absolute restraint on all public utility strikes. On the other hand, the sections of the King-Thompson Act here involved do not

impose a prior or absolute restraint on the "right" to engage in a public utility strike, but instead only prohibit such a strike after the Governor and the courts have found that public health and welfare are in immediate jeopardy. §§ 295.180, 295.200 (1) (6), R. S. Mo. 1959, 361 S. W. 2d 33, 51, 52; R. 158, 188. An immediate threat to the public health and welfare is precisely the situation which justifies police interference with the basic individual rights discussed above. Compare **Thomas v. Collins**, 323 U. S. 516.

Further illustration of the potential limits on the states' power to interfere with "rights" protected by § 7 of the Taft-Hartley Act would be superfluous. These analogies demonstrate that there are potential limitations on this power, and that state laws which protect the public in an emergency can safely be allowed to restrict the exercise of a § 7 "right" without in any way jeopardizing the essence of the "right."

In attempting to determine the intent of Congress it is also important to remember that this Court has on numerous occasions held that a public health and safety measure is not pre-empted unless the Congressional intention to supersede such a regulation is absolutely clear. **Reid v. Colorado**, 187 U. S. 137, 148; **Mintz v. Baldwin**, 289 U. S. 346, 360; **Kelly v. Washington**, 302 U. S. 1, 13; **Savage v. Jones**, 225 U. S. 501, 532, and other cases collected in the dissent in **Hill v. Florida**, 325 U. S. 538, 549-552.

The case of **Maurer v. Hamilton**, 309 U. S. 598, where this Court held that the Motor Carrier Act of 1935 did not pre-empt a Pennsylvania statute which prohibited motor carriers from hauling cars on the top of their truck cabs because the practice was dangerous on the steep grades of the Pennsylvania highways illustrates this point. The Court based its decision on the well-established rule that a state safety regulation will not be pre-empted unless no

other interpretation of the federal statute is possible (309 U. S. 598, 614):

> "As a matter of statutory construction congressional intention to displace local laws in the exercise of the commerce power is not, in general, to be inferred unless clearly indicated by those considerations which are persuasive of the statutory purpose. **This is especially the case when public safety and health are concerned.**" (Emphasis supplied.)

Since the King-Thompson Act is a police measure to protect public health, safety and welfare in an emergency, and since the Taft-Hartley Act does not show an unequivocable Congressional intent to replace such local laws, it follows that this case is governed by the usual rule against pre-emption in cases involving local police regulations. This rule has, in effect, been applied to the Taft-Hartley Act in the violence cases, where this Court has held that state laws or court action designed to protect the public by curbing violence are not pre-empted because there is no compelling Congressional direction to this effect. **Allen-Bradley Local v. Wisconsin Emp. Rel. Bd.**, 315 U. S. 740; **United Auto Workers v. Wisconsin Emp. Rel. Bd.**, 351 U. S. 266. The same result should be reached in this case by holding that state legislation designed solely to protect public health, safety and welfare in an emergency created by a utility strike is not pre-empted by the Taft-Hartley Act.

CONCLUSION.

For the foregoing reasons Amicus Curiae submits that this case should be dismissed because it has become moot.

If this Court decides that the case is not moot it should affirm the opinion of the Supreme Court of Missouri by holding that the seizure-no-strike provisions of the King-

Thompson Act are not pre-empted by the Labor Management Relations Act of 1947 as amended.

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